



California Environmental Protection Association

January 28, 2019

Via US Mail Certified

Rick Downey
N Leasing Company, LLC, dba
Global Materials Recovery Services
3899 Santa Rosa Avenue
Santa Rosa, CA 95407

Via US Mail

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CT Corporation System
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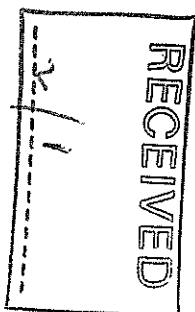
Via Email tdbruen@bsplaw.com

Thomas Bruen
Law Offices of Thomas M. Bruen, P.C.
1990 North California Blvd, Suite 608
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Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water
 Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of N Leasing
Company, LLC, dba Global Materials Recovery Services ("Global Materials").

I am writing on behalf of California Environmental Protection Association ("CEPA") to
give legal notice that CEPA intends to file a civil action against N Leasing Company, LLC, dba
Global Materials Recovery Services ("Discharger") for violations of the Federal Clean Water



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Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Global
Materials Recovery Service Facility located at 3899 Santa Rosa Avenue in Santa Rosa,
California ("Global Materials," "the Facility" or "the site").

CEPA is an environmental citizen's group established under the laws of the State of
California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands,
vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action
under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b)
Notice must be given to the alleged violator, the U.S. Environmental Protection Agency
("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit
provides notice to the Discharger of the violations which have occurred and continue to occur at
the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and
Intent to File Suit, CEPA intends to file suit in federal court against the Discharger under CWA
section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

CEPA's investigation of the Facility has uncovered significant, ongoing, and continuous
violations of the CWA and the General Industrial Storm Water Permit issued by the State of
California (NPDES General Permit No. CAS000001 [State Water Resources Control Board
("SWRCB") Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ
("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") collectively the "General
Permit").

Information available to CEPA, including documents obtained from California EPA's
online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates
that on or around June 28, 2018, N Leasing Global Materials Recovery Services, Inc. submitted a
Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the
2015 Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger
Identification ("WDID") number 1491027774.

As more fully described in Section III, below, CEPA alleges that in its operations of the
Facility, the Discharger has committed ongoing violations of the substantive and procedural
requirements of the Federal Clean Water Act, California Water Code §13377, the General Permit,
the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and
California Code of Regulations, Title 22, § 64431.

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II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Global Materials' permanent facility address of 3899 Santa Rosa Avenue in Santa Rosa, California.

Global Materials is a refuse and recycling collection, processing and disposal facility. Facility operations are covered under Standard Industrial Classification Codes (SIC) 5093 (Scrap and Waste Materials).

Based on the EPA's Industrial Storm Water Fact Sheet for Sector N – Scrap Recycling and Waste Recycling Facilities, polluted discharges from operations at the Facility contain PCBs, heavy metals, such as zinc, copper, chromium, iron and aluminum, toxic metals, such as mercury, lead, arsenic and cadmium, total suspended solids ("TSS"), benzene, hydraulic fluids, battery acid, gasoline and diesel fuel, fuel additives, oil lubricants, brake and transmission fluids, chlorinated solvents, gasoline and diesel fuels, ethylene glycol, coolants, and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals, published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to CEPA indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges into the City of Santa Rosa municipal storm drain system, which then enters the Laguna de Santa Rosa before flowing to the Russian River. ("Receiving Waters").

The Russian River is a water of the United States. The CWA requires that water bodies such as the Russian River meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the *North Coast Region Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Russian River watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the Russian River watershed is listed for water quality impairment on the most recent 303(d)-list for the following: Dissolved Oxygen, Indicator Bacteria, Mercury, Nitrogen, Phosphorus, Sedimentation / Siltation, Temperature.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMLs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

CEPA alleges that between July 1, 2018, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect Storm Water Run-Off Samples during Qualified Storm Events

Pursuant to Section XI B. 1 of the General Permit, a Qualified Storm Event (QSE) is a precipitation event that both produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

The Discharger's samples collected as listed below are not in compliance with the General Permit because they were not collected during Qualified Storm Events as defined by the General Permit.

Sample Date	QSE Info
11/29/18	Not a valid QSE – third consecutive day of rainfall

3. Failure to Deliver Samples to the Laboratory within 48 Hours of Collection

Pursuant to Attachment H, Section 2 of the General Permit, Dischargers are to deliver storm water run-off samples to a qualified Laboratory within 48 hours of the physical sampling. The Discharger's samples listed below were not delivered to the Facility's Laboratory in that time frame:

Sample Date/Time	Date/Time Laboratory Received Sample
11/21/18 13:50	11/28/18 11:00

4. Failure to Collect Samples From Each Drainage Area at all Discharge Locations

Section XI B.4 of the General Permit requires Dischargers to collect samples from all discharge locations, regardless of whether the discharges are substantially similar. Dischargers may analyze a combined sample consisting of equal volumes, collected from as many as four substantially similar discharge locations, provided that the Discharger submits a Representative Sampling Reduction Justification form with its sample analysis, and the samples are combined in the lab in accordance with Section XI C.5 of the General Permit. Furthermore, Representative sampling is only allowed for sheet flow discharges or discharges from drainage areas with multiple discharge locations.

According to the Discharger's current SWPPP, the Facility has two mandatory sampling locations, listed as "Outfall A/Effluent" and "Outfall B." The storm water runoff sample analysis the Discharger uploaded for sample collected on November 29, 2018 failed to include any sample analysis from Outfall B.

Furthermore, the Facility did not submit a Representative Sampling Reduction Justification form with any of its sample analyses.

B. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

CEPA alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

Specific BMP Deficiencies

On multiple occasions, the Facility was inspected by the County of Sonoma, as Local Enforcement Agency for CalRecycle, pursuant to the Facility's Solid Waste Facility Permit No. 49-AA-0390. During those inspections, the following BMP deficiencies were noted:

Inspection Date	BMP Deficiencies Noted
7/17/18	<ol style="list-style-type: none"> The drainage control channel was observed partially filled with mud and sediment during the inspection. Improper housekeeping was observed, along with a large amount of accumulated inoperable equipment. Several concrete block walls forming commodity storage bunkers on the site were observed to be dislodged and leaning, and a large hole was visible in the concrete floor of the transfer station.
8/23/18	The onsite C&D Daily Material Tonnage and Transaction Reports for July and August 2018 documented multiple instances each month of exceeding the maximum permitted waste tons of green waste, residual recyclable material and vehicles per day.
9/27/18	The onsite C&D Daily Material Tonnage and Transaction Reports for September 2018 documented multiple instances of exceeding the maximum permitted waste tons of green waste, residual recyclable material and vehicles per day.
10/16/18	<ol style="list-style-type: none"> The onsite C&D Daily Material Tonnage and Transaction Reports for September 23-October 15, 2018 documented multiple instances of exceeding the maximum permitted waste tons of green waste, residual recyclable material and vehicles per day. The drainage control channel was observed partially filled with mud and sediment.

3	The sort line was not in operation at the transfer station.
4	A pile of treated wood waste was observed stored on the ground in a storage bunker during the time the trailer of treated wood waste was being hauled to the disposal site

C. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to CEPA indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

Specifically, CEPA's investigation has uncovered that polluted storm water runoff from the Facility is leaving the site and flowing onto neighboring and adjacent business properties on a regular basis when it rains.

CEPA further alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches.

CEPA hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes "Numeric Action Levels" ("NALs") derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT (General Permit, Section I.M. (Finding 62)).

The Discharger's exceedances of Benchmark values over the last three (3) years, identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies the Discharger that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility's self-reported data submitted to the Regional Water Board, "Self-monitoring reports under the Permit are deemed" "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The Discharger's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient BMPs at the Facility. EPA Benchmarks are relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D. Cal. 2016) 205 F. Supp.3d 1128; *Bankkeeper v. Krinner Metals, Inc.* (C.D. Cal. 2009) 619 F. Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfgs. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiffs' contention that defendant did not have appropriate BMPs to achieve BAT/BCT)].

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

2. Discharges in Excess of Receiving Water Limitations

In addition to employing technology based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitation found in Section VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards ("WQS") are set forth in the California Toxics Rule ("CTR") and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly

comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).)

The Basin Plan establishes WQS for the North Coast Region, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Information available to EDEN indicates that the Facility's storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, EDEN puts the Discharger on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALS listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALS do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility's industrial storm water discharges and/or authorized NSWDs are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP and certify via SMARIS any additional BMPs identified which are necessary in order meet the Receiving Water Limitations.

EDEN alleges that from at least November 1, 2018, to the present, the Discharger has been in violation of the Receiving Water Limitations provision of Section VI of the General Permit as evidenced by its exceedances of the applicable Water Quality Standards set forth in the Regional Basin Plan, indicated below:

Further, the Discharger has failed comply with Section XX.B of the General Permit. Failure to comply with the additional Water Quality-Based Corrective Action requirements listed in Section XX.B is an additional violation of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date	Parameter	Unit mg/L	Sample Analysis Result	EPA Benchmark: NAL average/ instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
11/21/18	Chemical Oxygen Demand (COD)		350	120	
11/21/18	COD		180	120	
11/21/18	TSS (total suspended solids)		160	100	
11/21/18	Aluminum		1.6	75	1.0
11/21/18	Zinc		1.6	26	
11/21/18	Iron		2.0	1.0	
11/21/18	Iron		4.3	1.0	
11/21/18	Copper		.080	.0332	
11/29/18	pH	S.U.	8.7	Between 6.0 and 8.5	
11/29/18	TSS		200	100	
11/29/18	COD		130	120	
11/29/18	Aluminum		7.5	75	1.0
11/29/18	Copper		.048	.0332	
11/29/18	Iron		11	1.0	

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are N Leasing Company, LLC and employees of the Discharger responsible for compliance with the CWA

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2018, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is California Environmental Protection Association ("CEPA")

CEPA has retained counsel in this matter as follows.

CRAIG A. BRANDT
Attorney at Law
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Oakland CA, 94618
Telephone: (510) 601-1309
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To ensure proper response to this Notice, all communications should be addressed to CEPA's legal counsel, Mr. Craig A. Brandt

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of CEPA live, work, and/or recreate near the Receiving Waters. For example, CEPA members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of CEPA's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, CEPA will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), CEPA will seek to recover its litigation costs, including attorneys' and experts' fees.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger's counsel to contact CEPA's counsel within 30 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



GERARD DUENAS
President
California Environmental Protection Association

Copies to:

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